

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY LEE LACOMBA, SR. &
ROCHELLE LOUISE LACOMBA,

Plaintiffs,

v.

EAGLE HOME LOANS AND
INVESTMENT, LLC & DEL TORO
LOAN SERVICES, INC.,

Defendants.

No. 2:23-cv-0370 KJM DB

ORDER

Plaintiffs commenced this action on February 27, 2023, by filing a complaint. (ECF No. 1.) On April 19, 2023, a Clerk's entry of default was entered as to defendant Del Toro Loan Services, Inc., pursuant to plaintiff's request. (ECF No. 16.) On July 17, 2023, plaintiffs filed a motion for default judgment against defendant Del Toro Loan Services, Inc., and noticed the motion for hearing before the undersigned on August 25, 2023, pursuant to Local Rule 302(c)(19). (ECF Nos. 32 & 33.)

However, on July 17, 2023 plaintiffs also filed an amended complaint. (ECF No. 30.) No default has been entered as to any defendant with respect to the amended complaint. And plaintiffs filing of an amended complaint rendered defendant's default on the original complaint void. See Rhodes v. Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010) ("As a general rule, when a

1 plaintiff files an amended complaint, the amended complaint supercedes the original, the latter
2 being treated thereafter as non-existent.”). In this regard, “after amendment the original pleading
3 no longer performs any function[.]” Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).
4 “Consequently, default judgment on the Amended Complaint would be improper because no
5 default has been entered on the Amended Complaint.” ThermoLife Intern., LLC v. Sechel
6 Holdings, Inc., No. CV 14-2291 PHX JAT, 2015 WL 1521779, at *2 (D. Ariz. Apr. 3, 2015).
7 Plaintiffs’ motion for default judgment, therefore, will be denied without prejudice to renewal as
8 having been rendered moot. Nelson v. Nationwide Mortg. Corp., 659 F. Supp. 611, 615 (D. D.C.
9 1987) (“In light of Nelson’s filing of an amended complaint, her motions for entry of default
10 judgments against Nationwide, Tillette, and Butler must be denied as moot.”).

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiffs’ July 17, 2023 motion for default judgment (ECF No. 32) is denied without
13 prejudice to renewal as having been rendered moot; and
- 14 2. The August 25, 2023 hearing of plaintiffs’ motion is vacated.

15 Dated: August 23, 2023

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18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE
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